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**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT E. SMITHSON,
Appellant-Petitioner,

VS.

KELLI L. SMITHSON,
Appellee-Respondent.

No. 62A04-0709-CV-532

APPEAL FROM THE PERRY CIRCUIT COURT
The Honorable Lucy Goffinet, Judge
The Honorable Jonathan Parkhurst, Magistrate
Cause No. 62C01-0704-DR-243

April 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Robert E. Smithson (“Father”) appeals the trial court’s denial of his petition for registration of foreign child support order as well as the trial court’s award of attorney fees to Kelli L. Smithson (“Mother”). We reverse in part, vacate in part, and remand.

Issues

Father raises two issues, which we restate as follows:

- I. Whether the trial court erred by denying his petition for registration of foreign child support order; and
- II. Whether the trial court abused its discretion by awarding attorney fees and costs to Mother.

Facts and Procedural History

Father and Mother were married on February 19, 1991. The marriage produced two children: K.S. was born on September 21, 1991, and L.S. was born on June 1, 1995. Father, Mother, K.S., and L.S. resided in Ashtabula County, Ohio when Mother filed her complaint for dissolution of marriage in the Ashtabula County Court of Common Pleas (“the Ohio Court”). On June 15, 2005, the Ohio Court entered a divorce decree, in which it designated Mother as the residential parent and legal custodian of both children. The Ohio Court granted Father parenting time and ordered him to pay child support of \$1,000.00 per month.

Shortly after filing for divorce in the Ohio Court, Mother moved with K.S. and L.S. to Tell City, Indiana, where they have resided continuously ever since. Also while the divorce was pending, Father moved from Ohio to Owensboro, Kentucky, where he has resided continuously except for a two-month period when he lived in Tell City, Indiana.

Sometime prior to March 7, 2007, Mother informed the Ohio Court of Father's move to Kentucky and his arrearage in child support. Subsequently, Kentucky's Cabinet for Health and Family Services filed a petition to register the Ohio child support order with the Daviess Circuit Court in the Commonwealth of Kentucky ("the Kentucky Court"). On March 7, 2007, the Kentucky Court held a hearing on the matter. On March 28, 2007, the Kentucky Court ordered Father to make his monthly support payments to the Kentucky Division of Child Support. Father testified that he filed with the Kentucky Court a petition to modify, which was denied.¹

On May 3, 2007, Father filed in the Perry Circuit Court ("the trial court") a petition to register the Ohio Court's child support order and a petition to modify support. On July 17, 2007, the trial court held a hearing on Father's petitions. On the day of the hearing, Mother filed an objection to Father's petitions, claiming that the Uniform Interstate Family Support Act ("UIFSA")² prohibited him from doing so. She accused him of "forum shopping." Appellant's App. at 30-33.

At the hearing, the trial court interrupted Father's testimony and asked to hear counsel's argument regarding the issue of jurisdiction. The court then stated that it would deny Father's petition for registration on the basis that the court lacked jurisdiction pursuant to UIFSA. The court asked the parties to submit proposed findings of fact and conclusions

¹ At the hearing, Father's counsel stated that the Kentucky Court claimed that it lacked jurisdiction and recommended Indiana as the proper forum for Father's petition to modify. There are no Kentucky Court documents in the record.

² UIFSA is a set of statutes that has been adopted in some form by all fifty states. Its purpose is to facilitate the enforcement of child and spousal support orders between parties residing in separate states.

thereon. On August 17, 2007, the trial court issued its order denying Father's petition for registration. The court's findings of fact included the following:

- a. [Mother] is a resident of Indiana.
- b. [Father] is a resident of Kentucky.
- c. The parties' Final Judgment Entry/Decree of Divorce was entered in the Court of Common Pleas, Ashtabula County, Ohio.
- d. On March 7, 2007, a Child Support Judgment and Order was entered by the Daviess Circuit Court, Division II, Commonwealth of Kentucky, wherein the Commonwealth of Kentucky, as the responding state, assumed jurisdiction for enforcement, only, of the Ohio Order.
- e. Pursuant to the provisions of UIFSA, the child support order[] entered by Ohio is being enforced in the Commonwealth of Kentucky, the residence of [Father].

Id. at 67. The court entered the following conclusions:

1. [UIFSA] addresses and controls child support actions and matters when the parties reside in different states.
2. The provisions of UIFSA clearly define jurisdictional issues and seek to prevent forum shopping. [Father's] Petition for Registration of Foreign Child Support Order is forum shopping.
3. Perry County, State of Indiana does not have jurisdiction over this matter.
4. The State of Ohio continues to have exclusive jurisdiction over the child support order, pursuant to the provision of UIFSA, Indiana is bound to recognize said exclusive jurisdiction, and Indiana recognizes said exclusive jurisdiction of the State of Ohio.
5. [Mother's] Objection to Registration of Foreign Child Support Order is granted.
6. [Father's] Petition for Registration of Foreign Child Support Order is denied.

7. [Father's] Request for Attorney fees is denied.
8. [Mother's] Request for Attorney fees is granted, [Mother] is to submit an Affidavit setting forth Attorney fees incurred herein.

Id. at 67-68. Having denied Father's petition for registration, the trial court did not rule upon his petition to modify. Father now appeals.

Discussion and Decision

I. Petition for Registration of Foreign Child Support Order

Father argues that the trial court erred in denying his petition for registration. As a preliminary matter, we note that Mother did not file an appellee's brief. When an appellee fails to submit a brief, we need not undertake the burden of developing an argument for her. *Cox v. Cantrell*, 866 N.E.2d 798, 810 (Ind. Ct. App. 2007), *trans. denied*. We apply a less stringent standard of review and may reverse the trial court's decision if the appellant establishes prima facie error. *Id.* "Prima facie" is defined as "at first sight," "on first appearance," or "on the face of it." *Id.*

We agree with the trial court's conclusion that Father's petition is governed by UIFSA, which is codified at Indiana Code Sections 31-18-1-1 to -9-4. Pursuant to Indiana Code Section 31-18-3-1(c):

An individual petitioner or a support enforcement agency may commence a proceeding authorized under this article [including the registration of an order for child support of another state] by filing a petition or comparable pleading in:

- (1) an initiating tribunal for forwarding to a responding tribunal; or
- (2) a tribunal of another state that has or is able to obtain personal jurisdiction over the respondent.

Here, Father filed his petition for registration of an Ohio child support order with an Indiana court that clearly had personal jurisdiction over Mother, an Indiana resident. At the hearing on Father's petition, Mother argued that he was required to file his petition with the Ohio Court for forwarding to an appropriate Indiana court. As stated above in Indiana Code Section 31-18-3-1(c)(1), UIFSA certainly allows for this option; however, Father, an "individual petitioner," was clearly permitted by Section 31-18-3-1(c)(2) to file the petition directly with the trial court.³ Moreover, our review of UIFSA reveals no provisions that would prohibit the trial court from granting Father's petition for registration. In fact, the UIFSA contemplates "automatic" registration:

- (a) A support order ... issued in another state is registered when the order is filed with the clerk of the appropriate court.
- (b) A registered order issued in another state is:
 - (1) enforceable in the same manner; and
 - (2) subject to the same procedures;
as an order issued by an Indiana tribunal.

Ind. Code § 31-18-6-3.

We note that at the hearing on Father's petition, Mother accused him of "forum shopping," and the trial court likewise adopted this view, stating in its order that UIFSA

³ We note that within the legal system, child support obligors are often generally referred to as "respondents" and obligees as "petitioners." At one time, UIFSA also used these terms interchangeably, defining both "obligor" and "respondent" as, *inter alia*, an individual who is liable under a support order, and defining "obligee" and "petitioner" as an individual to whom support is owed. In 1999, the legislature amended these definitions so that they no longer include the terms "petitioner" and "respondent." It now appears that for purposes of UIFSA, the term "petitioner" simply refers to the person who initiates a proceeding governed by the act, which could be either the obligee, or as in the instant case, the obligor. *See, e.g., Tate v. Fenwick*, 766 N.E.2d 423, 425 (Ind. Ct. App. 2002) (treating obligor father who initiated UIFSA proceeding as "petitioner" for purposes of UIFSA analysis).

seeks to prevent such activity.⁴ Appellant’s App. at 67. In fact, we think that another panel of this Court has identified a purpose of UIFSA more relevant to the instant case: “[A] main purpose of [UIFSA] ... is to simplify the collection of child support across state lines in today’s highly mobile society. ‘UIFSA provide[s] a mechanism for cooperation between state courts in enforcing duties of support.’” *Tate v. Fenwick*, 766 N.E.2d 423, 426 (Ind. Ct. App. 2002) (quoting *Stidham v. Whelchel*, 698 N.E.2d 1152, 1157 n.1 (Ind. 1998)). In our view, the facts of the instant case illustrate this important purpose of UIFSA. Mother filed for divorce in Ohio, and then the entire family left the state of Ohio prior to the divorce decree being entered. Mother and Father now live in two different states, neither of which is Ohio. The plain language of UIFSA permits Father to register the Ohio child support order in Indiana, where Mother and the children reside. The trial court erred by denying Father’s

⁴ Through her allegation of “forum shopping,” mother clearly suggests that Father is attempting to use UIFSA simply to bring this case before a venue more favorable than Ohio to his own interests. However, our review of UIFSA indicates that the trial court would be required to apply the substantive law of Ohio to its enforcement of the Ohio support order. *See* Ind. Code § 31-18-6-4. While it is true that the act would require the trial court to apply Indiana substantive law to Father’s petition to modify, Mother fails to present any evidence that Indiana’s child support laws, in comparison with those of Ohio or Kentucky, would allow for a more significant reduction of Father’s support obligation. *See* Ind. Code § 31-18-3-3.

Mother also argues that if the child support order is registered in the trial court, the order “cannot be enforced in Indiana because [Father] resides in Kentucky.” Tr. at 14. However, UIFSA contemplates the registration and enforcement of an order by multiple states. *See* Ind. Code § 31-18-6-6 (“The petition for registration [of support order] must ... set forth ... a list of any other states in which the support order is registered[.]”); *but see* Ind. Code § 31-21-5-1 (under Uniform Child Custody Jurisdiction Act, only one state has exclusive jurisdiction to make initial child custody determination). In other words, the trial court’s registration of the support order does not nullify Kentucky’s ability to enforce that same order. Moreover, if the trial court modifies the Ohio support order, Mother could presumably file a petition to register that modified order in Kentucky for enforcement purposes.

petition for registration. We hereby reverse that order and remand for consideration of Father's petition to modify, upon which the trial court did not rule.⁵

II. Attorney Fees

Based on our reversal of the trial court's order denying Father's petition for registration, we hereby vacate the trial court's award to Mother of attorney fees.

Reversed in part, vacated in part, and remanded.

BAILEY, J., and NAJAM, J., concur.

⁵ Because the trial court denied Father's petition for registration, it did not rule upon Father's petition to modify, but we will briefly address it here. We direct the trial court to Indiana Code Section 31-18-6-11(a), which states in relevant part:

- (a) After a child support order issued in another state has been registered in Indiana... the responding Indiana tribunal may modify the order only if, after notice and hearing, the responding tribunal finds that:

(1) the:

- issuing
- (A) child, individual obligee, and obligor do not reside in the state;
 - (B) petitioner who is a nonresident of Indiana seeks modification; and
 - (C) respondent is subject to the personal jurisdiction of the Indiana tribunal.

As shown above in the trial court's findings and conclusions, Mother, Father, K.S., and L.S. do not live in the issuing state of Ohio. Further, Father is a nonresident of Indiana and Mother is subject to the personal jurisdiction of the trial court. Thus, UIFSA allows the trial court to consider on its merits and rule upon Father's petition to modify after it registers the Ohio support order. As mentioned above, UIFSA requires that Ohio law govern the enforcement of the current support order, while the substantive law of Indiana law will apply to any modification proceedings. Ind. Code §§ 31-18-3-3, -6-4.